

**BEFORE THE SECRETARY OF STATE  
STATE OF COLORADO**

**CASE NO. OS 20080024**

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**AGENCY DECISION**

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**IN THE MATTER OF THE COMPLAINT FILED BY WILLIAM FURSE REGARDING  
ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY DAVID  
DUNCAN AND "COMMITTEE TO ELECT DAVID DUNCAN DA" CANDIDATE  
COMMITTEE.**

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**Background**

On July 21, 2008 the Complainant filed with the Colorado Secretary of State the complaint in this matter. The complaint alleged violations of the Colorado Constitution article XXVIII regarding campaign and political financing as well as violations of the Fair Campaign Practices Act, Section 1-45-101, C.R.S. *et seq.* The complaint requested referral of this matter to an Administrative Law Judge ("ALJ") within three days with a hearing to be set within 15 days, all as provided by article XXVIII, Section 9(2)(a) of the Colorado Constitution.

The following day the Secretary of State referred the matter to the Office of Administrative Courts ("OAC") by letter copied to the parties. On July 23, 2008 the OAC sent a Notice of Hearing to the parties informing the parties of the August 1, 2008 hearing date and location of the hearing at the OAC.

On that date the Defendant David Duncan appeared at the OAC, but the Complainant did not. The ALJ dismissed the complaint but did not issue a final decision at that time because the Defendant asked to submit a motion for costs. On August 11, 2008 the Defendant submitted his Motion for Costs ("Motion") that itemized \$448.16 of expenses he incurred in having to travel from the Durango area to attend the hearing.

It was not until August 19, 2008 that the Complainant submitted anything in writing explaining his absence from the hearing. On that date the Complainant submitted a Response to David Duncan's Motion for Costs ("Response") and a Motion to Refile Original Complaint. According to the Response, the Complainant left July 29, 2008 for a two-week vacation and did not receive the Notice of Hearing. Also according to the Response, he learned of his absence from the hearing August 4 in relation to the publishing of a story in a Durango newspaper.

The Complainant's Response leaves a number of things unexplained. The address of Complainant's complaint is "Law Offices of William Y Furse, LLC." The Complainant does not explain why it was that apparently no arrangement was made to contact him when the notice was received at the address of his law office. As demonstrated by his complaint, the Complainant was aware that hearing would be set

within 15 days of referral of the matter to the OAC. He was copied on the July 22 letter from the Secretary of State referring the matter to the OAC. Nevertheless, he chose to go on vacation July 29. He also apparently did not call the OAC to find out when the hearing was set prior to leaving.

In seeking repayment of his costs, Defendant's Motion relies on the authority at Section 13-17-101, C.R.S. et seq. and Sections 13-16-105, 107, 113 and 122, C.R.S. However, this authority is not applicable in this administrative case. Rather the applicable statute is Section 1-45-111.5(2), C.R.S., which reads:

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure. Notwithstanding any other provision of this subsection (2), no attorney fees may be awarded under this subsection (2) unless the court or administrative law judge, as applicable, has first considered the provisions of section 13-17-102(5) and (6), C.R.S. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

### **Discussion**

The ALJ strongly disapproves of the Complainant's conduct of filing a complaint, knowing that a hearing would be promptly set, but then leaving town. In addition, the Complainant, who is apparently running a law office, made no arrangements to be notified of the hearing date that he knew had to be in the mail. Nor did he apparently call the OAC to learn of the hearing date. Finally, the ALJ questions the Complainant's office procedures where a document mailed by the OAC on July 23, 2008 is not read prior to July 29, 2008.

Nevertheless, the ALJ has no real basis to find that Complainant was aware of the hearing and simply chose not to attend. The state of the record is insufficient to find that the action in this case "lacked substantial justification ... was interposed for delay or harassment or ... that an attorney or party unnecessarily expanded the proceeding by other improper conduct ...." Section 1-45-111.5(2) makes clear that such a finding is

necessary to impose costs. In particular, there was no unnecessary expansion of this proceeding.

The Complainant's Motion to Refile Original Complaint asks the ALJ to refile the original complaint against the Defendant. As discussed above, the complaint in this matter was dismissed August 1, 2008. It is the responsibility of the Complainant to file any new complaint with the Secretary of State as provided in article XXVIII, Section 9(2)(a).

### **Order and Agency Decision**

1. This matter was dismissed on August 1, 2008.
2. The Motion for Costs is denied.
3. The Motion to Refile Original Complaint is denied.

This Agency Decision is final and is subject to review by the Court of Appeals, pursuant to Section 24-4-106(11), C.R.S.

### **DONE AND SIGNED**

September 15, 2008

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MATTHEW E. NORWOOD  
Administrative Law Judge

## **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above **AGENCY DECISION** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

David Duncan  
2511 Borrego Drive  
Durango, CO 81301

"Committee To Elect David Duncan DA"  
Candidate Committee  
2511 Borrego Drive  
Durango, CO 81301

William Furse  
1099 Main Avenue, Suite 151  
Durango, CO 81301

and to:

William A. Hobbs  
Deputy Secretary of State  
Department of State  
1560 Broadway, Suite 200  
Denver, CO 80203

on this \_\_\_\_ day of September 2008.

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Office of Administrative Courts